

United States
Circuit Court of Appeals

For the Ninth Circuit. //

UNITED STATES OF AMERICA,
Appellant,
vs.
HAGAN AND CUSHING COMPANY,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the District of Idaho,
Central Division

FILED

APR - 1 1940

PAUL P. O'BRIEN,
CLERK



No. 9459

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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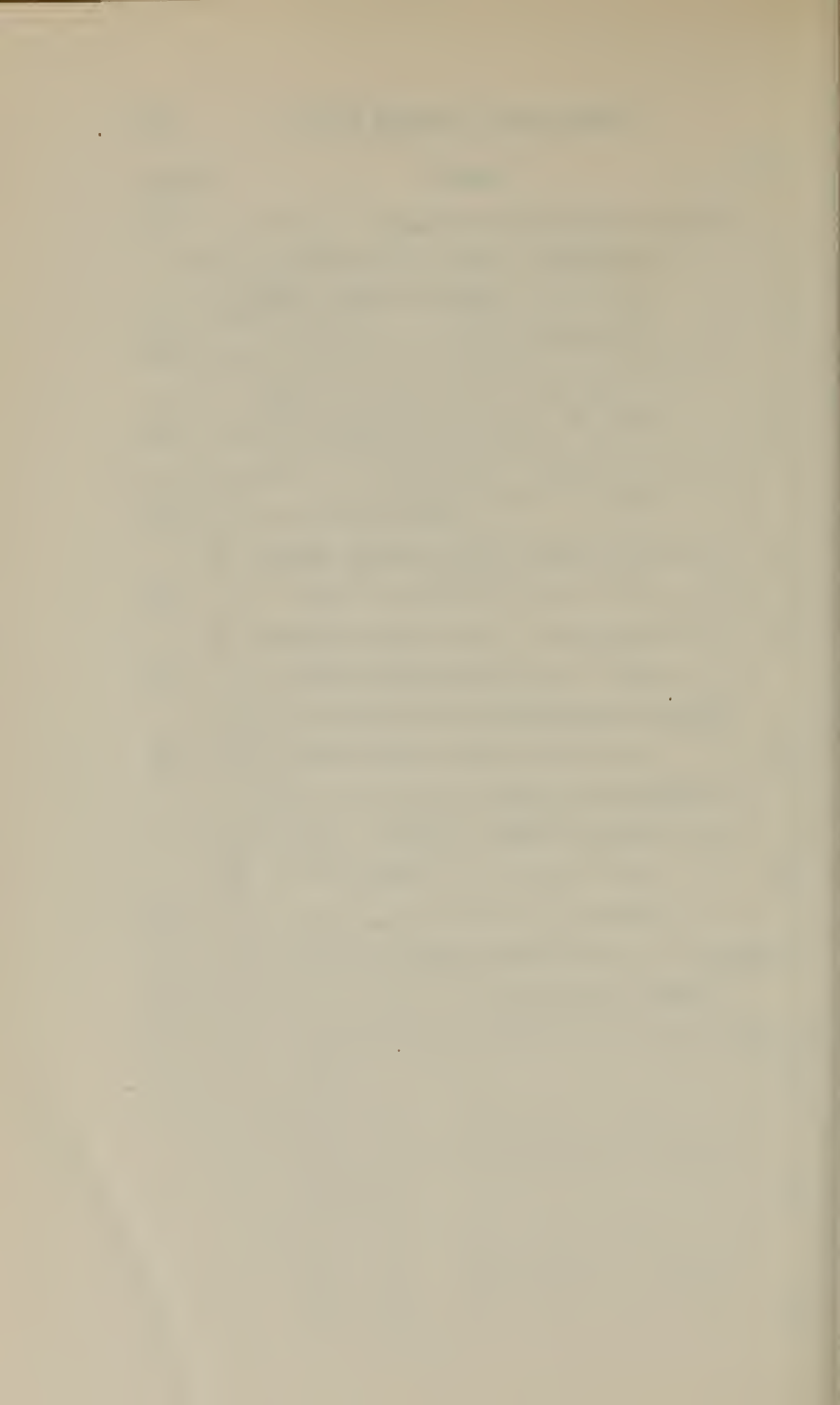
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*Page numbering appearing at foot of page of original certified
Transcript of Record.

In the District Court of the United States for the
District of Idaho, Central Division

Law No. 1416

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HAGAN AND CUSHING COMPANY,

Defendant.

COMPLAINT

Now comes the United States of America, by John A. Carver, United States Attorney for the District of Idaho, and brings this action on behalf of the United States of America against the Hagan and Cushing Company, said company having its office and place of business at Moscow, in the State of Idaho; this action being brought upon the suggestion of the Attorney General of the United States at the request of the Comptroller General of the United States, and upon information furnished by said Comptroller General.

Plaintiff, as grounds for its complaint against defendant, says:

(1) That on various dates *between* April 22, 1935, and November 20, 1935, defendant entered into certain contracts with the plaintiff under which defendant undertook to deliver, to various agencies of the United States Government, supplies including pork and pork products at prices fixed by bids duly submitted by defendant to plaintiff, and accepted by

plaintiff. Each of said contracts contained among others the following provision:

“Prices bid herein include any Federal Tax heretofore imposed by the Congress which is applicable to the material on this bid.”

(2) That the rates of processing tax imposed upon the products furnished by the defendant to plaintiff were fixed by the Secretary of Agriculture under the supposed authority of the Agricultural Adjustment Act of May 12, 1933, as amended, prior to the date set for the opening of the bids for the contracts. Defendant delivered the supplies pursuant to the contracts and plaintiff paid to the defendant the full prices bid, which [3] included amounts for which defendant was liable under the supposed authority of the Agricultural Adjustment Act for processing taxes levied by that Act on the products furnished by defendant to plaintiff.

(3) That for the month of April, 1935, and months subsequent thereto, defendant did not pay and has never paid to the United States, or to any of its officials, any amounts on account of the processing taxes levied under the supposed authority of the Agricultural Adjustment Act.

Defendant particularly did not pay to the United States or to any of its officials any amounts for processing taxes on account of the various supplies which it furnished the plaintiff under the contracts referred to above. A list of said contracts showing their official numbers, the date on which they were

entered into, and the amount of processing tax included in the bid price which was paid by the plaintiff to the defendant under each contract, is set forth below, as follows:

Contract Number	Date of Contract	Amount of Processing
W-5920-qm-ECW-546	April 22, 1935.....	\$315.77
ER-W-5906-qm-ECW-20	April 25, 1935.....	49.40
ER-W-5920-qm-ECW-37	May 21, 1935.....	206.71
W-972-qm-702	June 24, 1935.....	55.00
W-5906-qm-ECW-72	June 24, 1935.....	49.40
W-972-qm-704	July 22, 1935.....	67.23
W-5906-qm-ECW-103	July 24, 1935.....	129.63
W-5906-qm-ECW-113	July 29, 1935.....	118.09
ER-W-5906-qm-ECW-123	August 21, 1935.....	53.12
W-972-qm-713	September 23, 1935.....	36.69
ER-W-5906-qm-ECW-178	October 22, 1935.....	502.88
ER-W-5906-qm-ECW-196	November 20, 1935.....	700.76
Total.....		\$2284.68

(4) That defendant, although repayment has been demanded, has never repaid to the plaintiff any part of the amounts of processing taxes set forth in Paragraph (3) hereof.

(5) That by reason of the foregoing, defendant is indebted to the plaintiff in the sum of Two Thousand Two Hundred Eighty-four Dollars and Sixty-eight Cents (\$2,284.68).

Wherefore plaintiff prays for judgment against defendant in the sum of Two Thousand Two Hundred Eighty-four Dollars and Sixty-eight Cents

(\$2,284.68), with interest as provided by law, and for its costs herein expended.

JOHN A. CARVER

United States Attorney
Attorney for Plaintiff,
Boise, Idaho

(Duly verified)

[Endorsed]: Filed June 13, 1939. [4]

[Title of District Court and Cause.]

ANSWER

Comes now Hagan and Cushing Company, the defendant above named, and for answer to plaintiff's complaint on file herein, admits, denies and alleges as follows:

I.

Defendant admits the allegations contained in Paragraph (1) of plaintiff's complaint.

II.

Answering Paragraph (2) of said complaint, defendant denies the same and each and every allegation contained therein, save and except defendant admits that defendant admits delivery of supplies pursuant to the contracts referred to in said Paragraph and admits that plaintiff paid the full price.

Specifically, defendant denies that the full prices bid included any amounts for processing taxes and alleges that the bid prices did not include processing taxes in any amount whatsoever.

III.

Answering Paragraph (3) of plaintiff's complaint, defendant admits that for the month of April, 1935, and subsequent thereto defendant has not paid to plaintiff any amounts for processing taxes and admits that defendant has not paid plaintiff any amounts for processing taxes on account of supplies furnished [5] by defendant to plaintiff. Defendant further admits the list of contracts, their official numbers and the dates thereof as alleged in Paragraph (3) of plaintiff's complaint, but denies that any processing tax in any amount whatsoever was included in the bid price paid by plaintiff to defendant.

IV.

Answering Paragraph (4) of plaintiff's complaint, defendant denies each and every allegation therein contained.

V.

Answering Paragraph (5) of plaintiff's complaint, defendant denies each and every allegation therein contained.

Wherefore, Having fully answered plaintiff's complaint, defendant prays judgment that the same be dismissed.

J. H. FELTON

MAURICE H. GREENE

Attorneys for Defendant.

(Duly Verified)

[Endorsed]: Filed October 9, 1939. [6]

In the District Court of the United States for the
District of Idaho, Central Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HAGAN AND CUSHING COMPANY,

Defendant.

JUDGMENT

This cause came on regularly for trial before the Court and a jury, the parties appearing by their respective counsel. A jury of twelve persons were regularly empaneled and sworn to try said action and evidence was introduced on the part of the plaintiff. At the close of the evidence introduced on the part of the plaintiff, and upon motion of defendant's counsel, which motion was, after argument of counsel for respective parties, granted by the Court, the Court instructed the jury to render a ver-

dict in favor of the defendant. After receiving the instructions of the Court, the jury returned its written verdict which was in words following, to-wit:

“In the District Court of the United States for
the District of Idaho, Central Division

“UNITED STATES OF AMERICA,
Plaintiff,

vs.

HAGAN AND CUSHING COMPANY,
Defendant.

VERDICT OF THE JURY

“We, the Jury in the above entitled cause, acting under the instructions of the Court, find for the defendant.

“MARTIN FILIPAK
Foreman.”

Wherefore, by virtue of the law and by reason of the premises aforesaid, [8]

It is Ordered and Adjudged that the plaintiff take nothing upon its Complaint herein and that said action be and the same is hereby dismissed.

Witness the Honorable Charles C. Cavanah, Judge of said Court and the seal thereof this 8th day of November, 1939.

W. D. McREYNOLDS

[Seal]

Clerk

[Endorsed]: Filed November 8, 1939. [9]

[Title of District Court and Cause.]

TRANSCRIPT.

This matter came on for hearing before the Honorable Charles C. Cavanah, sitting with a jury at Moscow, Idaho, on November 8, 1939.

John A. Carver, United States District Attorney,
E. H. Casterlin, Assistant United States District Attorney

Paul S. Boyd, Assistant United States District Attorney

All of Boise, Idaho,

Attorneys for the plaintiff.

Maurice H. Greene, Boise, Idaho,

J. H. Felton, Moscow, Idaho,

Attorneys for the defendant.

G. C. Vaughan,

Reporter. [10]

November 8, 1939

Moscow, Idaho.

Mr. Casterlin: (opening Statement). We now offer as exhibit number 1, copies of the contract which were heretofore deposited with the Clerk, the same being certified copies. At the same time we offer as part of exhibit number 1, Statement and certificate of award; delivery order; purchase order; bid together with instructions to bidder attached thereto; certificate of compliance; subsistence schedule; Treasury warrants applicable to each

respective contract; vouchers for purchases, services other than personal; statement of Hagan & Cushing; certificate of Hagan & Cushing; certificate as to correctness of the bill; delivery order. All in respect to the contract dated April 22, 1935 number W 5920; QMECW 546 and likewise all corresponding papers in connection with each of the succeeding contracts mentioned in paragraph 3 of plaintiff's complaint.

Mr. Green: We have no objection to the contracts but I believe it might be more convenient if each contract might be marked as a separate exhibit.

Mr. Casterlin: I limit the offer as exhibit 1 now to the stated items in connection with the contract dated April 22, 1935. At the same time I offer as exhibit number 2 all the papers enumerated in connection with exhibit [11] 1,—I offer now in connection with the contract dated April 25, 1935, and I offer as exhibit 3 the respective papers in connection with contract dated May 21, 1935, and I also offer as exhibit 4 the respective papers in connection with the contract of June 24, 1935 further described as W972 QM 702 and as exhibit number 5, all the respective papers in connection with contract dated June 24, 1935 described as W 5906 QMECW 72; and as exhibit number 6, the same respective papers in connection with the contract dated July 22, 1935; as exhibit 7 the respective papers in connection with the contract dated July 24, 1935; as exhibit number 8, the respective papers in connection with contract dated July 29, 1935; and

as exhibit number 9, the respective papers in connection with the contract dated July,—in connection with the contract dated August 21, 1935 and the same papers in connection with the contract dated September 23, 1935 as exhibit 10, and as exhibit 11, the same papers in connection with contract dated October 22, 1935; as exhibit number 12, the same papers in connection with the contract dated November 20, 1935; the dates given are more particularly described by reference to paragraph 3 of the complaint, I am using the dates mentioned in the complaint as a matter of brevity.

Mr. Green: We have no objection to the admission. [12]

Mr. Casterlin: At this time I ask permission to read from these contracts, or any of the exhibits at any time during these proceedings.

The Court: Very well.

(Portion of
PLAINTIFF'S EXHIBIT No. 1)

Page No. 1

Standard Government Form No. 31

Approved by the President.,

June 10, 1927.

STANDARD GOVERNMENT FORM OF BID
SUPPLY CONTRACT

Duplicate

Bid No. QM 972-36-1

Date Issued: July 12, 1935

Opening Date for This Bid: 1:30 P. M., July 22,
1935

To: Quartermaster,

Fort George Wright, Washington.

Place: Spokane, Wn.

Date: 7-22-35

In compliance with your invitation for bids to furnish materials and supplies listed on the reverse hereof or on the accompanying schedules, numbered:

the undersigned, Hagan and Cushing

a Corporation organized and existing under the laws of the State of Idaho

a partnership consisting of

an individual trading as

of the city of Spokane Wn

hereby proposes to furnish, within the time specified, the materials and supplies at the prices stated

opposite the respective items listed on the schedules and agrees upon receipt of written notice of the acceptance of this bid within net days (60 days if no shorter period be specified) after the date of opening of the bids, to execute, if required, the Standard Government Form of Contract (Standard Form No. 32) in accordance with the bid as accepted, and to give bond, if required, with good and sufficient surety or sureties, for the faithful performance of the contract, within 10 days after the prescribed forms are presented for signature.

Discount will be allowed for prompt payment as follows: 10 calendar days net per cent; 20 calendar days net per cent; 30 calendar days net per cent; or as stated in the schedules.

(Time will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter [27] date is later than the date of delivery)

HAGAN AND CUSHING CO.

(Full name of Bidder.)

By A. J. WHITE Mgr

(Name & Title)

902 No Monroe

(Address)

Spokane

A. E. HAGAN

(Witness to Signature)

2-4 [28]

* * * * *

Taxes:

Bidders are advised that any tax imposed by the Revenue Act of June 6, 1932, should be included in the selling price. (See Pages No. 4 & 5, Par. 15, (b) (c) and (d) of said Revenue Act.)

Prices bid herein include any Federal Tax heretofore imposed by Congress which is applicable to the materials on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture or sale of the supplies covered by this bid, and are paid by the Contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly and any amount due the Contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as separate items.

Bids containing conditions modifying this paragraph in any manner will not be considered.

Bidders are informed that State Taxes are not applicable on purchases by the Federal Government, and should not be included in prices bid.

The standard tax clause which is printed in and forms a part of your bid should not be modified or changed, but you should state on your bid that State Taxes are not included and will not be invoiced. [28-A]

(Portion of
PLAINTIFF'S EXHIBIT No. 1
requested by Appellee)

Page No. 7

Standard Form No. 36

QM 972-36-1 (Subsistence)

STANDARD GOVERNMENT FORM OF CONTINUATION
SCHEDULE FOR STANDARD FORMS

No. 30-33

SUPPLIES FOR AUGUST, 1935

Item No.	Articles	Unit	Quantity	Amount	
				Price	Dollars Cents
1.	Bacon, smoked, Type 1, dry, sugar box cured, Grade #2, 8 to 10- lbs. Fed. Spec., PP-B-81	lb	1200	.35	
2.	Beef Quarters, fresh, chilled (Type), Class 1 (steer), Grade "B", (Medium). To be wrapped in cheese cloth or stockinette and sewed in new burlap. <i>Conformation.</i> — The carcass may be slightly angular and moderately thick. Rounds shall be moderately short and thick. Loins and ribs shall be moderately thick to slightly flattened. Chucks shall be moderately thick with a tendency toward flatness and neck shall be moderately short. <i>Finish.</i> — The fat shall be white to a yellowish tinge, moderately firm, may be irregularly distributed and shall be thickest over the back but may be very thin or absent in small areas over the round, and fades out over the chuck, neck and shanks. There shall be at least a small amount of fat over the internal surface of the ribs and there shall be a moderate amount of the remainder of the internal fats. The kidney shall be covered with fat. <i>Quality.</i> — The flesh may be slightly soft with a small amount of marbling in the lighter weight and a moderate amount in the heavier carcasses and of moderately fine texture. The color shall be red to a slightly darker red. The chin bones shall be soft and red in the light weight carcasses and shall be topped with pearly white cartilage, but may be fairly hard and tinged with white and topped with very little cartilage in the heavier carcasses. <i>General.*</i> —				

Item No.	Articles	Unit	Quantity	Amount	
				Price	Dollars Cents
	The carcass shall have an average amount of lean meat and from a small to a moderate amount of marbling. The fats may be irregularly deposited, often being wasty in certain regions and deficient in others. (Fed. Spec., PP-B-221)	lb	5000		
3.	Butter, Grade C, 90-score, 1# prints. Fed. Spec., C-B-801.	lb	2000		
4.	Cheese, American Cheddar, U. S. #1, Grade B., Fed. Spec., C-C-271	lb	400		
5.	Chicken, Roasting, Class 1c (1) Grade A., Commercial Pack. Fed. Spec., PP-C-251a.	lb	800		
6.	Eggs, fresh, Class A, Grade b3(2) U. S. Extras. Fed. Spec., C-E-271.	doz	3000		
7.	Eggs, fresh, Sales, U. S. Extras. Cartons. One dozen to a carton. Fed. Spec., C-E-271.	doz	500		
8.	Lard, Pure, 1# cartons, Type 1. Fed. Spec., PP-L-101.	lb	300		
9.	Lard, Sub., Type 2, packed in 20# net wt. Commercial Containers, Fed. Spec., EE-L-101a.	lb	1500		
10.	Lard, Sub., Type 1., packed in 3# cans. Fed. Spec., EE-L-101a.	can	120		
11.	*Milk, fresh, Type 1, Grade A. Packaging in Quart Bot. Fed. Spec., C-M-381A.	bot	6250		[69]

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12.	Pork Hams, Fresh, chilled, Grade A, Commercial Pack. Fed. Spec., PP-P-571.	lb	1000	.2267	
13.	*Potatoes, Irish, U. S. Grade #1, packed in 100# net wt. new sacks. Spec., HHH-P-611.	lb	20,000		

Item No.	Articles	Unit	Quantity	Unit Amount	
				Price	Dollars Cents
14.	*Onions, fresh, Type A, Grade #1., Packed in 50# net wt. sacks, new. Fed. Spec., HHH-O-531.	lb	2000		
15.	Bacon, smoked, Type 1, dry, sugar box cured, Grade #1. 4 to 6-lbs Fed. Spec., PP-B-81.	lb	500	.38	
16.	Butter, Grade B, 92-score, 1# cartons, Commercial Pack. Fed. Spec., C-B-801.	lb	1000		
17.	Ham, smoked, swt, pkld, cured, Type 1, Grade 1, Commercial Pack. 10 to 12-lbs. Fed. Spec., PP-H-71	lb	1500	.2624	
18.	Beef Chucks, Grade "B" Medium; Commercial Pack. Fed. Spec., PP-B-221.	lb	200	.0850	
19.	Beef Rounds, Grade "B" Medium Commercial Pack. Fed. Spec., PP-B-221.	lb	200	.1587	
20.	Liver, Beef, Class A, Type 1, Fed. Spec., PP-L-351.	lb	200	.1217	
21.	Pork Loins, fresh, Grade A, Commercial Cut & Pack, Fed. Spec., PP-P-571-2.	lb	400	.2367	
22.	Pork Lean Backs, fresh, Grade A, Commercial Cut & Pack, Fed. Spec., PP-P-571-2.	lb	100	.2824	
23.	Pork Shoulders, fresh, Grade A, Commercial Cut & Pack. Fed. Spec., PP-P-571-2.	lb	300	.1767	
24.	Pork Spare Ribs, fresh, Grade A, Commercial Cut & Pack. Fed. Spec., PP-P-571-2.	lb	400	.1387	

Item No.	Articles	Unit	Quantity	Amount	
				Unit Price	Dollars Cents
25.	Sausage, Franks, uncolored, Type 1, Grade A. Commercial Pack. Fed. Spec., PP-S-81.	lb	250	.1393	
26.	Sausage, Bologna, Type 1, Grade A, Commercial Pack. Fed. Spec., PP-S-71.	lb	100	.1393	
27.	Sausage, Pork, fresh, bulk, Type 5, Grade A. Commercial Pack. Fed. Spec., PP-S-91.	lb	100	.1923	
28.	Sausage, Pork Links, Type 1, Grade 1, Commercial Pack-Fed. Spec., PP-S-91.	lb	100	.2497	
Page No. 9					[70]
29.	Boston Butts, smoked, Commercial Cut & Pack. Fed. Spec., PP-P-571.	lb	300	.2397	
30.	Beef, Dried, 5# pkgs. Shall comply with Fed. Spec., PP-B-211 with the exceptions that it shall not be packed in tins. Grade A.	lb	50		
31.	Beef, Corner, fresh, boneless. Shall be of good quality meat free from blood clots, skin, stringy fibrous tissue, tendons & excessive fat. Meat from shanks, flanks, skirts, and navel end of plates, not to be included.	lb	200	.1393	
32.	*Bread, Soft, Rye, Type D. 2# loaves. Fed. Spec., EE-B-671.	lb	450		
33.	*Buttermilk, fresh, Type B, in bulk. Fed. Spec., C-B-816., Par. E-2.	gal	100		
34.	Chickens, Fryers, Class B-1-b, Grade A. Fed. Spec., PP-C-251a.	lb	500		

Item No.	Articles	Unit	Quantity	Amount	
				Unit Price	Dollars Cents
35.	*Clams, fresh, hard shell. 150/170 to gal. Open, shell removed. Fed. Spec., PP-C-401.	QT	10		
36.	*Cream, fresh, Type 2, Fed. Spec., C-C-671.	QT	10		
37.	*Salmon, Fresh, Fed. Spec., PP-F-381.	lb	100		
38.	*Fish, Black Cod. Fed. Spec., PP-F-381.	lb	75		
39.	*Fish, Halibut, Fed. Spec., PP-F-381.	lb	200		
40.	*Fish, Smelt, fresh, Fed. Spec., PP-F-381.	lb	100		
41.	Ham, Boiled, Best Grade	lb	150	.3393	
42.	Headcheese, No Cereal, No Colors. Fed. Spec., PP-H-191.	lb	100	.1567	
43.	*Ice Cream, Qt. Bricks, asstd. flavors, Fed. Spec., EE-I-116.	QT	400		
44.	Lamb, fresh, carcass, Choice Grade. Fed. Spec., PP-L-91.	lb	100	.1197	
45.	Leg of Lamb, fresh, Choice Grade. Fed. Spec., PP-L-91.	lb	100	.17	
46.	Liver, fresh, Calf, Class A. Type 1. Fed. Spec., PP-L-351.	lb	100	.2391	
47.	Mutton, fresh, Side, Grade "A". Fed. Spec., PP-M-791.	lb	200	.07	
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48.	Leg of Mutton, Grade "A". Fed. Spec., PP-M-791.	lb	100	.12	
49.	*Oysters, fresh, Grade B. Fed. Spec., PP-O-956a.	gal	5		
50.	Pig's Feet, Type B-1a. Fed. Spec., PP-P-371.	lb	100	.05	

[71]

Item No.	Articles	Unit	Quantity	Amount	
				Unit Price	Dollars Cents
51.	Sausage, Liverwurst, Best Grade, Chilled. Fed. Spec., PP-S-86.	lb	100	.1377	
52.	Sausage, Salami, fresh, Best Grade.	lb	75	.2223	
53.	Sausage, Summer, fresh, Best Grade.	lb	75	.22	
54.	Tongue, Beef, fresh	lb	100	.1117	
55.	Veal, fresh, Side, Choice Grade, Chilled. Fed. Spec., PP-V-191.	lb	300	.1224	
56.	Leg of Veal, fresh, Choice Grade, chilled. Fed. Spec., PP-V-191.	lb	200	.20	
57.	Veal Loaf, fresh. Shall be made of choice quality veal, free from blood clots, bruises, skin, fibrous tissue, tendons, excessive fat or cereals.	lb	100	.17	
58.	*Candy, Chocolate, 1-lb boxes, Type A., Assorted. To contain not less than eight (8) different varieties proportionately assorted. (X) Sample Required. Fed. Spec., EE-C-71.	box	100		

Items marked with * are to be delivered F.O.B. Ft. Geo. Wright,
Washington. Other items F.O.B. Spokane, Washington.

(Portion of
PLAINTIFF'S EXHIBIT No. 2)

CCC 5906-36-4 12

Sheet No. 1

Standard Form No. 31

Approved by the President.,

June 10, 1927.

STANDARD GOVERNMENT FORM OF BID
(SUPPLY CONTRACT)

Pacific Standard Time

Original

Opening Date for This Bid: 10:00 A. M. July 29,
1935

To: District Quartermaster
Civilian Conservation Corps
Lewiston, Idaho

Place: Lewiston Idaho

Date: July 29, 1935.

In compliance with your invitation for bids to furnish materials and supplies listed on the reverse hereof or on the accompanying schedules, numbered CCC 5906-36-4 Sheets 1 to 22, Incl.

the undersigned, Hagan & Cushing Co.

a Corporation organized and existing under the laws of the State of Idaho

a partnership consisting of

an individual trading as

of the city of Moscow Idaho

hereby proposes to furnish, within the time speci-

fied, the materials and supplies at the prices stated opposite the respective items listed on the Schedules and agrees upon receipt of written notice of the acceptance of this bid within 15 days (60 days if no shorter period be specified) after the date of opening of the bids, to execute, if required, the Standard Government Form of Contract (Standard Form No. 32) in accordance with the bid as accepted, and to give bond, if required, with good and sufficient surety or sureties, for the faithful performance of the contract, within 10 days after the prescribed forms are presented for signature.

Discount will be allowed for prompt payment as follows: 20 calendar days per cent; 30 calendar days per cent; or as stated in the schedules.

(Time will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter [29] date is later than the date of delivery)

HAGAN & CUSHING CO.

(Full name of Bidder.)

A. E. HAGAN,

Sec.

Moscow, Ida

(Address)

DONALD MacQUAID

(Witness to Signature)

List Sheet Removed Here:

Note.—See Standard Government Instructions to Bidders and copy of the Standard Government Form of Contract, Bid Bond, and Performance Bond, which may be obtained upon application.

To insure prompt payment bills should be certified as follows: "I certify that the above bill is correct and just and that payment therefor has not been received."

(over)

O U. S. Government Printing Office: 1933

4-5 [30]

* * * * *

Sheet No. 4

Tax Clauses

Price (s) bid herein includes any Federal Tax heretofore imposed by Congress which is applicable to the materials on this bid. If any sales tax, processing tax, adjustments charge, or other taxes or charges are imposed or changed by Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture or sale of the supplies covered by this bid, and are paid to the Government by the contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly and any amount due the contractor as a result of such change will be charged to the Government and entered on the vouchers (Or invoices) as separate items. (This provision will be included in the contract.)

Bidders are informed that State Taxes are not applicable to purchases by the Federal Government and should not be included in prices bid. The standard tax clause which is printed in and forms a part of your bid should not be modified or changed but you should state on your bid that state taxes are not included and will not be invoiced as a separate item. [31]

(Portion of
PLAINTIFF'S EXHIBIT No. 3)

CCC 5906-36-1

Sheet No. 1

Standard Form No. 31

Approved by the President.,

June 10, 1927.

STANDARD GOVERNMENT FORM OF BID
(SUPPLY CONTRACT)
SUBSISTENCE

Pacific Standard Time

Original

Opening Date For This Bid: 10:00 A. M. July
22, 1935

To: District Quartermaster
Civilian Conservation Corps
Lewiston, Idaho

Place: Moscow Idaho

Date: July 22, 1935

In compliance with your invitation for bids to furnish materials and supplies listed on the re-

verse hereof or on the accompanying schedules, numbered: CCC 5906-36-1 Sheets 1 to 25, Incl.

the undersigned, Hagan & Cushing Co

a Corporation organized and existing under the laws of the State of Idaho

a partnership consisting of

an individual trading as

of the city of Moscow Idaho

hereby proposes to furnish, within the time specified, the materials and supplies at the prices stated opposite the respective items listed on the schedules and agrees upon receipt of written notice of the acceptance of this bid within 15 days (60 days if no shorter period be specified) after the date of opening of the bids, to execute, if required, the Standard Government Form of Contract (Standard Form No. 32) in accordance with the bid as accepted, and to give bond, if required, with good and sufficient surety or sureties, for the faithful performance of the contract, within 10 days after the prescribed forms are presented for signature.

Discount will be allowed for prompt payment as follows: 20 calendar days per cent; 30 calendar days per cent; or as stated in the schedules.

(Time will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter [32]

date is later than the date of delivery)

HAGAN & CUSHING CO

(Full name of Bidder.)

A. E. HAGAN

Sec-Treas

Moscow, Idaho

(Address)

DONALD MacQUAID

(Witness to Signature)

List Sheets Removed Here:

Note.—See Standard Government Instructions to Bidders and copy of the Standard Government Form of Contract, Bid Bond, and Performance Bond, which may be obtained upon application.

To insure prompt payment bills should be certified as follows: "I certify that the above bill is correct and just and that payment therefor has not been received."

(over)

O U. S. Government Printing Office: 1933

6-4 [33]

* * * * *

Sheet No. 3

Tax Clauses

Price (s) bid herein includes any Federal Tax heretofore imposed by Congress which is applicable to the materials on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by Congress after

the date set for the opening of this bid and made applicable directly upon the production, manufacture or sale of the supplies covered by this bid, and are paid to the Government by the contractor on the articles or supplies herein contracted for, then the prices named in his bid will be increased or decreased accordingly and any amount due the contractor as a result of such change will be charged to the Government and entered on the vouchers (Or invoices) as separate items. (This provision will be included in the contract.)

Bidders are informed that State Taxes are not applicable to purchases by the Federal Government and should not be included in prices bid. The standard tax clause which is printed in and forms a part of your bid should not be modified or changed but you should state on your bid that state taxes are not included and will not be invoiced as a separate item. [34]

(Portion of

PLAINTIFF'S EXHIBIT No. 4)

CCC 5906-36-6

#25

Sheet No. 1

Standard Form No. 31

Approved by the President.,

June 10, 1927.

STANDARD GOVERNMENT FORM OF BID
Pacific Standard Time

Duplicate

Opening Date for This Bid: 1:00 P. M., August
19, 1935To: District Quartermaster,
Civilian Conservation Corps,
Lewiston, Idaho

Place: Lewiston, Idaho

Date: August 19, 1935

In compliance with your invitation for bids to furnish materials and supplies listed on the reverse hereof or on the accompanying schedules, numbered: CCC 5906-36-6, Sheets 1 to 34, inclusive the undersigned, Hagan & Cushing Company a Corporation organized and existing under the laws of the State of Idaho a partnership consisting of an individual trading as of the city of Moscow, Idaho hereby proposes to furnish, within the time speci-

fied, the materials and supplies at the prices stated opposite the respective items listed on the schedules and agrees upon receipt of written notice of the acceptance of this bid within 15 days (60 days if no shorter period be specified) after the date of opening of the bids, to execute, if required, the Standard Government Form of Contract (Standard Form No. 32) in accordance with the bid as accepted, and to give bond, if required, with good and sufficient surety or sureties, for the faithful performance of the contract, within 10 days after the prescribed forms are presented for signature.

Discount will be allowed for prompt payment as follows: 20 calendar days per cent; 30 calendar days per cent; or as stated in the schedules.

(Time will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter [35] date is later than the date of delivery)

HAGAN & CUSHING COMPANY

(Full name of Bidder.)

A. E. HAGAN

Moscow, Idaho

(Address)

DONALD MacQUAID

(Witness to Signature)

List Sheets Removed Here:

Note.—See Standard Government Instructions to Bidders and copy of the Standard Government Form of Contract, Bid Bond, and Performance Bond, which may be obtained upon application.

To insure prompt payment bills should be certified as follows: "I certify that the above bill is correct and just and that payment therefor has not been received."

(over)

O U. S. Government Printing Office: 1933

8-5 [36]

* * * * *

Sheet No. 3

Tax Clauses

Price (s) bid herein includes any Federal Tax heretofore imposed by Congress which is applicable to the materials on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture or sale of the supplies covered by this bid, and are paid to the Government by the contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly and any amount due the contractor as a result of such change will be charged to the Government and entered on the vouchers (Or invoices) as separate items. (This provision will be included in the contract.)

Bidders are informed that State Taxes are not applicable to purchases by the Federal Government and should not be included in prices bid. The standard tax clause which is printed in and forms a part of your bid should not be modified or changed but you should state on your bid that state taxes are not included and will not be invoiced as a separate item. [37]

(Portion of
PLAINTIFF'S EXHIBIT No. 5)

CCC 5906-36-22

#26

Sheet No. 1

Standard Form No. 31

Approved by the President.,
June 10, 1927.

STANDARD GOVERNMENT FORM OF BID
SUBSISTENCE AND IGE

Pacific Standard Time.

Original

Opening Date for This Bid: 10:00 A. M., October
17, 1935 Sheet No. 1 to 41 Inc

To: District Quartermaster
Civilian Conservation Corps
Lewiston, Idaho.

Place: Moscow Idaho

Date: Oct 17, 1935

In compliance with your invitation for bids to furnish materials and supplies listed on the reverse

hereof or on the accompanying schedules, numbered:

the undersigned, Hagan & Cushing Co.

a Corporation organized and existing under the laws of the State of Idaho

a partnership consisting of

an individual trading as

of the city of Moscow Idaho

hereby proposes to furnish, within the time specified, the materials and supplies at the prices stated opposite the respective items listed on the schedules and agrees upon receipt of written notice of the acceptance of this bid within 15 days (60 days if no shorter period be specified) after the date of opening of the bids, to execute, if required, the Standard Government Form of Contract (Standard Form No. 32) in accordance with the bid as accepted, and to give bond, if required, with good and sufficient surety or sureties, for the faithful performance of the contract, within 10 days after the prescribed forms are presented for signature.

Discount will be allowed for prompt payment as follows: 20 calendar days per cent; 30 calendar days per cent; or as stated in the schedules.

(Time will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certi-

fied by the contractor is received if the latter [38] date is later than the date of delivery)

HAGAN & CUSHING CO.

(Full name of Bidder.)

A. E. HAGAN

Sec.

Moscow, Idaho

(Address)

H. J. LOVELESS

(Witness to Signature)

List sheets removed here:

Note.—See Standard Government Instructions to Bidders and copy of the Standard Government Form of Contract, Bid Bond, and Performance Bond, which may be obtained upon application.

To insure prompt payment bills should be certified as follows: "I certify that the above bill is correct and just and that payment therefor has not been received."

(over)

O U. S. Government Printing Office: 1933

10-1803

10-5 [39]

* * * * *

Sheet No. 3

11. Taxes:

a. Bidders are advised that any tax imposed by the Revenue Act of June 6, 1932, should be included in the selling price. (See Pages No. 4 & 5, par. 15, (b), (c) and (d) of said Revenue Act.

b. Prices bid herein include any Federal Tax heretofore imposed by Congress which is applicable to the materials on this bid. If any sales tax, processing tax, adjustment charge or other taxes or charges are imposed or charged by Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture or sale of the supplies herein contracted for and are paid to the Government, then the prices named in this bid will be increased or decreased accordingly and any amount due the Contractor as a result of such change will be charged to the Government and entered on voucher (or invoice) as separate items. [40]

(Portion of
PLAINTIFF'S EXHIBIT No. 6)
CCC 5906-36-30

25

Sheet No. 1

Standard Form No. 31
Approved by the President.,
June 10, 1927.

STANDARD GOVERNMENT FORM OF BID
(SUPPLY CONTRACT)
Subsistence

Standard Pacific Time.

Original

Opening Date for this Bid: 10:00 A. M. November 18, 1935

To: District Quartermaster
Civilian Conservation Corps
Lewiston, Idaho.

Place: Moscow, Idaho

Date: Nov. 18, 1935

In compliance with your invitation for bids to furnish materials and supplies listed on the reverse hereof or on the accompanying schedules, numbered: 1 to 35, incl.

the undersigned, Hagan & Cushing Co.
a Corporation organized and existing under the laws of the State of Idaho
a partnership consisting of

an individual trading as
of the city of Moscow, Idaho
hereby proposes to furnish, within the time specified, the materials and supplies at the prices stated opposite the respective items listed on the schedules and agrees upon receipt of written notice of the acceptance of this bid within 15 days (60 days if no shorter period be specified) after the date of opening of the bids, to execute, if required, the Standard Government Form of Contract (Standard Form No. 32) in accordance with the bid as accepted, and to give bond, if required, with good and sufficient surety or sureties, for the faithful performance of the contract, within 10 days after the prescribed forms are presented for signature.

Discount will be allowed for prompt payment as follows: 20 calendar days per cent; 30 calendar days per cent; or as stated in the schedules.

(Time will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter [41] date is later than the date of delivery)

HAGAN & CUSHING CO.

(Full name of Bidder.)

A. E. HAGAN

Sec.

Moscow, Idaho

(Address)

DONALD MacQUAID

(Witness to Signature)

List sheets removed here.

(Sheets 2 to 10 must not be removed)

Note.—See Standard Government Instructions to Bidders and copy of the Standard Government Form of Contract, Bid Bond, and Performance Bond, which may be obtained upon application.

To insure prompt payment bills should be certified as follows: "I certify that the above bill is correct and just and that payment therefor has not been received."

(over)

O U. S. Government Printing Office: 1933

10-1803

12-5

[42]

* * * * *

Sheet No. 3

11. Taxes:

a. Bidders are advised that any tax imposed by the Revenue Act of June 6, 1932, should be included in the selling price. (See Pages No. 4 & 5, par. 15, (b), (c) and (d) of said Revenue Act.

b. Prices bid herein include any Federal Tax heretofore imposed by Congress which is applicable to the materials on this bid. If any sales tax, processing tax, adjustment charge or other taxes or charges are imposed or charged by Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture or sale of the supplies herein contracted for and are paid to the Government, then the prices

named in this bid will be increased or decreased accordingly and any amount due the Contractor as a result of such change will be charged to the Government and entered on voucher (or invoice) as separate items. [43]

(Portion of

PLAINTIFF'S EXHIBIT No. 7)

#1

Page #1

Standard Gov't. Form No. 31.

Approved by the President,

June 10, 1927.

STANDARD GOVERNMENT FORM OF BID
SUPPLY CONTRACT

Original

Duplicate

Triplicate

Indicate by making
Erasure.

Bid No. QM 972-36-7.

Date Issued: September 12, 1935.

Opening Date for this Bid: 1:30 (P. S. T.) P. M.
September 23, 1935

To: Quartermaster,
Fort George Wright, Wash.

Place: Spokane Wn

Date: 9-23-35

In compliance with your invitation for bids to furnish materials and supplies listed on the reverse

hereof or on the accompanying schedules, numbered:

the undersigned, Hagan and Cushing Co.

a Corporation organized and existing under the laws of the State of: Idaho. A partnership consisting of:

an individual trading as.....

of the city of Spokane Wash. hereby proposes to furnish, within the time specified, the materials and supplies at the prices stated opposite the respective items listed on the schedules and agrees upon receipt of written notice of the acceptance of this bid within net days (60 days if no shorter period be specified) after the date of opening of the bids, to execute, if required, the Std. Gov't. Form of Contract (Std. Form #32) in accordance with the bid as accepted, and to give bond, if required, with good and sufficient surety or sureties, for the faithful performance of the contract, within 10 days after the prescribed forms are presented for signature.

Discount will be allowed for prompt payment as follows: 10 calendar days: net per cent; 20 calendar days: net per cent; 30 calendar days: net per cent; or as stated in the schedules.

(Time will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certi-

fied by the contractor is received if the latter date is later than the date of delivery.)

HAGAN AND CUSHING CO.

(Full Name of Bidder.)

By A. G. WHITE Mgr.

(Name and Title.)

902 No. Monroe

(Address.)

M. J. TIMELL

(Witness to Signature.)

14-3 [44]

* * * * *

Page No. 4

Taxes:

Bidders are advised that any tax imposed by the Revenue Act of June 6, 1932, should be included in the selling price. (See Pages No. 4 & 5, Par. 15, (b) (c) and (d) of said Revenue Act.)

Prices bid herein include any Federal Tax heretofore imposed by Congress which is applicable to the materials on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture or sale of the supplies covered by this bid, and are paid by the Contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly and any amount due the Contractor as a result of such change will be charged to the Government

and entered on vouchers (or invoices) as separate items.

Bids containing conditions modifying this paragraph in any manner will not be considered.

Bidders are informed that State Taxes are not applicable on purchases by the Federal Government, and should not be included in prices bid.

The standard tax clause which is printed in and forms a part of your bid should not be modified or changed, but you should state on your bid that State Taxes are not included and will not be invoiced as separate items. [45]

(Portion of
 PLAINTIFF'S EXHIBIT No. 8)

Standard Government Form No. 31 15

Approved by the President.

June 10, 1927.

Page No. 1

STANDARD GOVERNMENT FORM OF BID
 SUPPLY CONTRACT

Original
 Duplicate
 Triplicate

Indicate by making

Bid No. QM-972-35-35 Erasure.

Date Issued June 14, 1935

Opening Date for this Bid: 1:30 P. M. June 24,
 1935

To: The Quartermaster
 Fort George Wright, Washington

Place: Spokane

Date: June 24-35

In compliance with your invitation for bids to furnish materials and supplies listed on the reverse hereof or on the accompanying schedules, numbered:

the undersigned, Hagan & Cushing Co.
 a Corporation organized and existing under the laws

of the State of: Idaho. A partnership consisting of:

an individual trading as.....
of the city of Spokane Wash hereby proposes to furnish, within the time specified, the materials and supplies at the prices stated opposite the respective items listed on the schedules and agrees upon receipt of written notice of the acceptance of this bid within net days (60 days if no shorter period be specified) after the date of opening of the bids, to execute, if required, the Standard Government Form of Contract (Standard Form No. 32) in accordance with the bid as accepted, and to give bond, if required, with good and sufficient surety or sureties, for the faithful performance of the contract, within 10 days after the prescribed forms are presented for signature.

Discount will be allowed for prompt payment as follows: 10 calendar days: net per cent; 20 calendar days: net per cent; 30 calendar days: net per cent; or as stated in the schedules.

(Time will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certi-

fied by the contractor is received if the latter date is later than the date of delivery.)

.....
(Full Name of Bidder.)

By HAGAN & CUSHING Co.

(Name and Title.)

(Name undecipherable)

902 N. Monroe

Spokane, Wash.

(Address.)

G. C. OLSON,

(Witness to Signature)

16-4 [46]

* * * * *

Sheet 1-A

Prices bid herein include any Federal Tax heretofore imposed by Congress which is applicable to the materials on this bid. If any sale tax, processing tax, adjustment charges, or other taxes or charges are imposed or changed by Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture or sale of the supplies covered by this bid, and are paid by the contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly and any amount due the contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as separate items. (This provision will be included in the contract.)

Bidders are informed that State Taxes are not applicable on purchases by the Federal Govern-

ment and should not be included in prices bid.

The standard tax clause which is printed in and forms part of your bid should not be modified or changed but you should state on your bid that state taxes are not included and will not be invoiced as a separate item. [47]

(Portion of

PLAINTIFF'S EXHIBIT No. 9)

ER-W-5920-QM-ECW

37

23

Standard Government Form No. 31

Approved by the President.

June 10, 1927.

Page No. 1

STANDARD GOVERNMENT FORM OF BID
SUPPLY CONTRACT

Duplicate

Bid No. 5920-35-93-ECW

Issued May 11, 1935

Opening Date for this Bid: May 21, 1935—10:00
A. M.

To: District Quartermaster,
Fort George Wright, Washington

Place: Spokane Wn

Date: May 21 1935

In compliance with your invitation for bids to furnish materials and supplies listed on the reverse

hereof or on the accompanying schedules, numbered:

the undersigned, Hagan & Cushing Co.

a Corporation organized and existing under the laws of the State of: Idaho. A partnership consisting of:

an individual trading as.....

of the city of Moscow, Idaho hereby proposes to furnish, within the time specified, the materials and supplies at the prices stated opposite the respective items listed on the schedules and agrees upon receipt of written notice of the acceptance of this bid within 15 days (60 days if no shorter period be specified) after the date of opening of the bids, to execute, if required, the Standard Government Form of Contract (Standard Form No. 32) in accordance with the bid as accepted, and to give bond, if required, with good and sufficient surety or sureties, for the faithful performance of the contract, within 10 days after the prescribed forms are presented for signature.

Discount will be allowed for prompt payment as follows: 20 calendar days: per cent: 30 calendar days: per cent; or as stated in the schedules.

(Time will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified

by the contractor is received if the latter date is later than the date of delivery.)

HAGAN & CUSHING CO.

(Firm Name of Bidder.)

By A. E. HAGAN

Title: Sec Treas

Moscow Ida

(Full Address)

DONALD MacQUAID

(Witness to Signature)

18-4 [48]

* * * * *

Page No. 5

b. Prices bid herein include any Federal Tax heretofore imposed by Congress which is applicable to the materials on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture or sale of the supplies covered by this bid, and are paid by the Contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly and any amount due the Contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as separate items. (This provision will be included in the contract.)

c. Bidders are informed that State Taxes are not applicable on purchases by the Federal Government, and should not be included in prices bid. [49]

(Portion of

PLAINTIFF'S EXHIBIT No. 10)

Standard Form No. 31

Approved by the President

June 10, 1927

CCC 5906-35-50

#27

STANDARD GOVERNMENT FORM OF BID
(Supply Contract)
SUBSISTENCE

Sheet No. 1

Pacific Standard Time

Triplicate

Opening Date for this Bid: 10:00 A. M., April 23,
1935To District Quartermaster, CCC.,
Lewiston, Idaho

Place—Lewiston Idaho

Date—April 23, 1935

In compliance with your invitation for bids to furnish materials and supplies listed on the reverse hereof or on the accompanying schedules, numbered: CCC 5906-35-50, Sheets 1 to 17 incl. the undersigned, Hagan & Cushing Co. a corporation organized and existing under the laws of the State of Idaho a partnership consisting of an individual trading as of the city of Moscow Idaho hereby proposes to

furnish, within the time specified, the materials and supplies at the prices stated opposite the respective items listed on the Schedules and agrees upon receipt of written notice of the acceptance of this bid within 15 days (60 days if no shorter period be specified) after the date of opening of the bids, to execute, if required, the Standard Government Form of Contract (Standard Form No. 32) in accordance with the bid as accepted, and to give bond, if required, with good and sufficient surety or sureties, for the faithful performance of the contract, within 10 days after the prescribed forms are presented for signature.

Discount will be allowed for prompt payment as follows: 10 calendar days per cent; 20 calendar days per cent; 30 calendar days per cent; or as stated in the schedules.

(Time will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter date is later than the date of delivery.)

HAGAN & CUSHING CO
(Full name of bidder)

A. E. HAGAN

Sec Treas

Moscow Idaho

(Address)

C. FRED JOCKHECK

(Witness to signature)

Note.—See Standard Government Instructions to Bidders and copy of the Standard Government Form of Contract, Bid Bond, and Performance Bond, which may be obtained upon application.

To insure prompt payment bills should be certified as follows: "I certify that the above bill is correct and just and that payment therefor has not been received."

(over)

O U. S. Government Printing Office: 1933

20-5 [50]

* * * * *

Sheet No. 2

Tax Clauses

Prices bid herein include any Federal Tax heretofore imposed by Congress which is applicable to the materials on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture or sale of the supplies covered by this bid, and are paid to the Government by the contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly and any amount due the contractor as a result of such change will be charged to the Government and entered on the vouchers (or invoices) as separate items. (This provision will be included in the contract.)

Bidders are informed that State Taxes are not applicable to purchases by the Federal Government and should not be included in prices bid. [51]

(Portion of
PLAINTIFF'S EXHIBIT No. 11)
CCC 5906-35-72

Standard Form No. 31
Approved by the President
June 10, 1927

STANDARD GOVERNMENT FORM OF BID
(Supply Contract)
SUBSISTENCE

Sheet No. 1

Pacific Standard Time

Original
#29

Opening Date for this Bid 10: A. M., June 20,
1935.

To District Quartermaster
Civilian Conservation Corps
Lewiston, Idaho

Place—Moscow, Idaho

Date—June 20, 1935

In compliance with your invitation for bids to furnish materials and supplies listed on the reverse hereof or on the accompanying schedules, numbered: CCC 5906-35-72 Sheets

the undersigned, Hagan & Cushing Co.
a corporation organized and existing under the laws
of the State of Idaho
a partnership consisting of
an individual trading as
of the city of Moscow Idaho hereby proposes to
furnish, within the time specified, the materials
and supplies at the prices stated opposite the re-
spective items listed on the Schedules and agrees
upon receipt of written notice of the acceptance of
this bid within 15 days (60 days if no shorter period
be specified) after the date of opening of the bids,
to execute, if required, the Standard Government
Form of Contract (Standard Form No. 32) in ac-
cordance with the bid as accepted, and to give bond,
if required, with good and sufficient surety or sure-
ties, for the faithful performance of the contract,
within 10 days after the prescribed forms are pre-
sented for signature.

Discount will be allowed for prompt payment as
follows: 10 calendar days per cent; 20 calendar
days per cent; 30 calendar days per cent;
or as stated in the schedules.

(Time will be computed from date of the delivery
of the supplies to carrier when final inspection and
acceptance are at point of origin, or from date of
delivery at destination or port of embarkation when
final inspection and acceptance are at those points,
or from date correct bill or voucher properly certi-

fied by the contractor is received if the latter date is later than the date of delivery.)

HAGAN & CUSHING CO

(Full name of bidder)

A. E. HAGAN

Sec. Tre.

Moscow, Idaho

(Address)

DONALD MacQUAID

(Witness to signature)

List Sheets Removed Here:

Note.—See Standard Government Instructions to Bidders and copy of the Standard Government Form of Contract, Bid Bond, and Performance Bond, which may be obtained upon application.

To insure prompt payment bills should be certified as follows: "I certify that the above bill is correct and just and that payment therefor has not been received."

(over)

O U. S. Government Printing Office: 1933

22-6 [52]

* * * * *

Sheet No. 3

Tax Clauses

Price—s bid herein includes any Federal Tax heretofore imposed by Congress which is applicable to the materials on this bid. If any sales tax, proc-

essing tax, adjustment charge, or other taxes or charges are imposed or changed by Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture or sale of the supplies covered by this bid, and are paid to the Government by the contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly and any amount due the contractor as a result of such change will be charged to the Government and entered on the vouchers (Or invoices) as separate items. (This provision will be included in the contract.)

Bidders are informed that State Taxes are not applicable to purchases by the Federal Government and should not be included in prices bid. The standard tax clause which is printed in and forms a part of your bid should not be modified or changed but you should state on your bid that state taxes are not included and will not be invoiced as a separate item. [53]

(Portion of
PLAINTIFF'S EXHIBIT No. 12)

Standard Government Form No. 31

Approved by the President

June 10, 1927

6

Page No. 1

STANDARD GOVERNMENT FORM OF BID
(Supply Contract)

ECW

W-5920-QM-ECW 546

Original) Indicate
) by making
) erasure

Bid No: 5920-35-85-ECW

Issued: April 12, 1935

Opening Date for this Bid: 10:00 A. M., April
22, 1935.

To District Quartermaster,
Fort George Wright, Washington

Place Spokane, Wn

Date April 22 1935

In compliance with your invitation for bids to
furnish materials and supplies listed on the reverse
hereof or on the accompanying schedules, num-
bered:

the undersigned, Hagan & Cushing Co.,
a corporation organized and existing under the
laws of the State of Idaho,
a partnership consisting of
an individual trading as
of the city of Moscow, Idaho,

hereby proposes to furnish, within the time specified, the materials and supplies at the prices stated opposite the respective items listed on the Schedules and agrees upon receipt of written notice of the acceptance of this bid within 15 days (60 days if no shorter period be specified) after the date of opening of the bids, to execute, if required, the Standard Government Form of Contract (Standard Form No. 32) in accordance with the bid as accepted, and to give bond, if required, with good and sufficient surety or sureties, for the faithful performance of the contract, within 10 days after the prescribed forms are presented for signature.

Discount will be allowed for prompt payment as follows: 20 calendar days.....per cent; 30 calendar days.....per cent; or as stated in the schedules.

(Time will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter date is later than the date of delivery.)

HAGAN & CUSHING CO

(Full name of bidder)

By: A. E. HAGAN

Title: Sec-Treasurer

C. A. HAGAN

Moscow Idaho

(Witness to signature)

(Full Address)

24-4 [54]

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Page No. 5

(b) Prices bid herein include any Federal Tax heretofore imposed by Congress which is applicable to the materials on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture or sale of the supplies covered by this bid, and are paid by the Contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly and any amount due the Contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as separate items. (This provision will be included in the contract.)

(c) Bidders are informed that State Taxes are not applicable on purchases by the Federal Government, and should not be included in prices bid.

(d) The standard tax clause which is printed in and forms a part of your bid should not be modified or changed, but you should state on your bid that State Taxes are not included and will not be invoiced as a separate item. [55]

Mr. Casterlin: We offer now as exhibit 13, a copy of "hog regulations series 1, number 1, issued October 29, 1934.

Mr. Green: We make the objection that it is immaterial and doesn't tend to prove or disprove any issue in this case. That it was issued under authority of an unconstitutional, invalid and void statute, and therefore not binding on the defendant.

(argument of counsel)

Mr. Green: I will say this, if the offer is limited to approving the rate of tax and not this so called regulation of the Secretary of Agriculture, then I have no objection. Limited to that, as to the rate of tax.

Mr. Casterlin: That is the purpose of the offer.

The Court: Then you agree, it is admitted with the limitation.

Mr. Casterlin: With the understanding that we had, that exhibits 1 to 12 may be read from at any time during the proceedings, may we have the same understanding [13] as to all the exhibits.

The Court: Yes.

Mr. Casterlin: I offer as exhibit 14, certified copy of certain correspondence between Hagan and Cushing Company and the claims division.

I now offer as exhibit 16, copy of a letter,—first as exhibit 15 certified copy of settlement statement.

I now offer as exhibit 16, copy of letter dated Boise, Idaho, April 14, 1939 addressed by myself to Hagan and Cushing Company.

Mr. Green: Which we concede is a true copy of a letter received and we have no objection to the exhibit.

The Court: Admitted.

PLAINTIFF'S EXHIBIT No. 15

United States
(Epluribus)
(Unum)
of America

General Accounting Office

Pursuant to the Act of June 10, 1921, 42 Stat. 24, I hereby certify that this is a true transcript, in 4 numbered documents, from the books and proceedings of the General Accounting Office in the following case:

HAGAN AND CUSHING COMPANY

In Witness Whereof, I have hereunto set my hand and caused the seal of the General Accounting Office to be affixed this 29th day of June, in the year 1939, at Washington.

[Seal]

R. N. ELLIOTT

Assistant Comptroller General
of the United States.

K

General Accounting Office

Form 6a

U. S. Government Printing Office: 1930 [56]

General Accounting Office

Form 2042

CERTIFICATE OF SETTLEMENT

General Accounting Office

Certificate No. US-5921-W

War—Settlements and Claims

Washington, D. C., February 2, 1939.

United States Claim No. COL-0663826 (Orig) (1)

(2) (3)

I certify that I have examined and settled the claim(s) of the United States against

Hagan and Cushing Company,

Moscow, Idaho

Debtor

for overpayments made under contracts described below, it appearing (1) that these contracts contain the tax clause relative to the increase or decrease of contract prices as a result of changes, subsequent to the date of opening of bids, in Federal taxes applicable to the supplies to be furnished thereunder, (2) that there was, in effect, a change of applicable Federal taxes, since no payment was made by the contractor of the amount of processing tax applicable to the supplies furnished and the legal liability for payment thereof has been removed by decision of the Supreme Court in *United States v. Butler*, 297 U. S. 1, and (3) that pay-

ment was made at the bid price for all supplies furnished under the below described contracts. The indebtedness an amount equivalent to the processing tax included in the bid price of supplies furnished, is computed as follows:

Contract No. W-972-qm-704, dated July 22, 1935:
September 1935 accounts of J. McKay

Voucher Number	Invoice No. and Date	Item	Weight Delivered	Weight Taxable	Tax per Pound	Amount of Overpayment
494	8/31/35	Pork hams, fresh	890	890	\$.0436	\$38.80
		Pork loins	544½	544½	.0486	26.46 (Over)

and find the sum of Two Thousand Two Hundred Eighty-Four — — — Dollars and Sixty-Eight — — — cents is due the United States from the above named debtor(s), to be deposited to the credit of.....

2160606—subsistence of the Army, 1936

\$158.92

025016—Emergency Relief, Emergency Conservation Work, War, Civilian Conservation Corps, 1935—March 31, 1937 (O. P. 25-35) 2,125.76

R. N. ELLIOTT

Acting Comptroller General
of the United States
By W. P. BEASLEY

(Posted Feb 6 1939 General Accounting Office)

\$2,284.68

U. S. Government Printing Office 16-4781

N. B. This settlement supersedes settlement No. US-5293-W, dated July 14, 1938.

cc: War Department,
Office Chief of Finance,
Washington, D. C.

Debt Card Made
2-6-39
Bmd

RSJ

WL 1-19-39 CML

[57]

Continued:

Contract No. W-972-qm-704, dated July 22, 1935:
September 1935 accounts of J. MacKay

Voucher Number	Invoice No. and Date	Item	Weight Delivered	Weight Taxable	Tax per Pound	Amount of Overpayment
494	8/31/35	Ham, boiled	21	21	\$.0544	\$1.14
		Pigs feet, fr.	55	55	.0042	.23
		Sausage, liverwurst	25	25	.0239	.60
						\$ 67.23

Contract No. W-5906-qm-ECW-113, dated July 29, 1935:
September 1935 accounts of J. MacKay

3015	8/28/35	Sausage, bologna	2808½	1263.825	.0243	30.71
		Sausage, frankfurters	3044	1217.6	.0243	29.59
		Sausage, liver	1804½	1804½	.0239	43.13
		Boiled ham	269½	269½	.0544	14.66
						118.09

Contract No. W-5906-qm-ECW-103, dated July 24, 1935:
September 1935 accounts of J. MacKay

2989	8/28/35	Pork ham, fr.	1047	1047	.0436	45.65
		Lard	3400	3400	.0247	83.98
						129.63

Voucher Number	Invoice No. and Date	Item	Weight Delivered	Weight Taxable	Tax per Pound	Amount of Overpayment
Contract No. ER-W-5906-qm-ECW-123, dated August 21, 1935:						
October 1935 accounts of J. MacKay						
1892	9/30/35	Pork Sausage links	2162	2162	.018	38.92
		Ham, boiled	206	206	.0544	11.21
		Headcheese	125	125	.0239	2.99
						53.12
Contract No. ER-W-5906-qm-ECW-178, dated October 22, 1935:						
December 1935 accounts of J. MacKay						
1965	11/30/35	Sausage, liver	891	891	.0239	21.29
		Headcheese	346	346	.0239	8.27
		Bacon	5801	5801	.0429	248.86
		Hams, s. p. smoked	4848	4848	.0463	224.46
						502.88

Contract No. ER-W-5906-qm-ew-196, dated November 20, 1935:
 January 1936 accounts of J. Mackay

Voucher Number	Date of Invoice	Item	Weight Delivered	Weight Taxable	Tax per Pound	Amount of Overpayment
2086	12/28/35	Sausage				
		frankfurters	4113	1645.2	\$.0243	\$ 39.98
		Sausage, bologna	1693	761.85	.0243	18.51
		Pork sausage, links	3385	3385	.018	60.93
		Hams, s. d. smoked	4922	4922	.0463	227.89
		Sausage, liver smoked	150	150	.0239	3.59
		Bacon	6039	6039	.0429	259.07
		Lard	3200	3200	.0247	79.04
		Boiled ham	216	216	.0544	11.75
						\$700.76

Contract No. W-972-qm-713, dated September 23, 1935:
 November 1935 accounts of J. MacKay

323	10/31/35	Pigs feet, fr	108	108	.0042	.45
		Ham, boiled	93 ³ / ₄	93 ³ / ₄	.0544	5.10
		Headcheese	9	9	.0239	.22
		Sausage, frankfurters	488	195.2	.0243	4.74
		Pork Sausage, bulk	319	319	.018	5.74
		Pork Sausage, links	1112	1112	.018	20.02
		Sausage, liver-wurst	17 ¹ / ₂	17 ¹ / ₂	.0239	.42
						36.69

Voucher Number	Date of Invoice	Item	Weight Delivered	Weight Taxable	Tax per Pound	Amount of Overpayment
Contract No. W-972-qm-702, dated June 24, 1935						
August 1935 accounts of J. MacKay						
817	7/31/35	Pork loins	534	534	.0486	25.95
		Pork shoulders, fresh	166	166	.0191	3.17
		Sausage, frankfurters	298	119.2	.0243	2.90
		Sausage, bologna	183 ³ / ₄	82.6875	.0243	2.01
		Pork sausage, bulk	92	92	.018	1.66
		Pork sausage, links	513	513	.018	9.23
		Boston butts, sm	227	227	.0292	6.63
		Hams, boiled	63 ¹ / ₂	63 ¹ / ₂	.0544	3.45
						55.00
						[59]
Contract No. ER-W-5920-qm-ecw-37, dated May 21, 1935:						
July 1935 accounts of J. MacKay						
2422	7/9/34	Ham, sp., sm.	1573	1573	\$.0463	\$72.83
		Sausage, bologna	4323	1945.35	.0243	47.27
		Sausage, frankfurters	8181 ¹ / ₂	3272.6	.0243	79.52
		Pork shoulders, fr., hocks on	371	371	.0191	7.09
						\$206.71

Voucher Number	Date of Invoice	Item	Weight Delivered	Weight Taxable	Tax per Pound	Amount of Overpayment
Contract No. ER-W-5906-qm-ecw-20, dated April 25, 1935:						
July 1935 accounts of J. MacKay						
2289	6/12/35	Pork hams, fr.	1133	1133	.0436	49.40
Contract No. W-5906-qm-ecw-72, dated June 24, 1935:						
August 1935 accounts of J. MacKay						
3917	6/30/35	Lard	2000	2000	.0247	49.40
Contract No. W-5920-qm-ecw-546, dated April 22, 1935:						
June 1935 accounts of J. MacKay						
2093	6/11/35	Hams, s. p. sm. Pork shoulders, fresh	5709	5709	.0463	264.33
			2693	2693	.0191	51.44

Total Amount Due the United States \$2,284.68

[Endorsed]: 1416-C. Plaintiff's Exhibit No. 15.
Admitted Nov. 8, 1939. [60]

(Portion of
PLAINTIFF'S EXHIBIT No. 16)

C-20

Boise, Idaho

April 14, 1939

Hagan and Cushing Company
Moscow, Idaho

Gentlemen:

Demand is hereby made upon you for the immediate payment to the Attorney General of the United States of the sum of \$2,284.68, representing the amount of overpayment to you on account of processing taxes applicable to hogs processed by it subsequent to April 1935. A statement of the account is enclosed herewith for your information.

It appears from the correspondence in the file that no compliance with the requests of the office of the Comptroller General of the United States for payment of this item has been made, and it is for that reason that this office is making a formal demand.

We trust that this matter may be adjusted by early payment and without the necessity of further action.

Very truly yours,

JOHN A. CARVER

United States Attorney

By: E. H. CASTERLIN

EHC/G

Assistant U. S. Attorney

Enclosure.

[Endorsed]: (Portion of) Plaintiff's Exhibit No. 16. Admitted Nov. 8, 1939. [61]

Mr. Casterlin: I offer as exhibit 17 certified copy of regulation,—hog regulation, series 1 which also contains order of the secretary and approval of the president.

The Court: We will take a short recess at this time. (admonition to the jury)

11 o'clock A. M.

November 8, 1939

Mr. Green: Now, to plaintiff's exhibit 17 I desire to make the objection that it is a purported [14] copy of regulations issued by the secretary of Agriculture under a void statute and not binding upon the defendant in this action, it is wholly immaterial, neither tending to prove or disprove any issue in this case, further that the document doesn't show that it was in force and effect during the period the various contracts here was executed and performed. Further, if it is offered for the purpose of establishing rates of taxes it is in conflict with plaintiff's exhibit 13 which has been received in evidence. The certificate said that there is annexed a printed copy of T D 4425. It doesn't show or purport to show what period of time the so called regulations were in force and effect, and the rates of taxes set out on page 11 show that they are in conflict with the rates of taxes set out on page 7 of exhibit 13 in a number of instances, there is a variation in the rate of taxes, and exhibit 13 does not show the period of time it purports to cover.

(Argument of Counsel)

The Court: You offer that on the basis of determining the computation of the amount?

Mr. Casterlin: Yes sir.

The Court: Not for any other purpose?

Mr. Casterlin: Exhibit 13 is the hog regulation number 1, number 17 is in conformity with 13 and as a result of the two we come to number 15 which is a comput- [15] ation of taxes made pursuant to these two.

The Court: He is limiting the offer to the computation of taxes and not for any other purpose, so exhibit 15 and 17 is in the same situation as exhibit 13.

Mr. Green: I object to exhibit 15 which purports to be a computation apparently made by the Government of the amount of taxes due on the various items-due on the various items included in the contracts on the ground that it is a self serving declaration and neither tends to prove or disprove any issue in this case. It is certified as being a true transcript from the books and proceedings of the General Accounting office in the following case, Hagan and Cushing Company, and has not been identified by the person who made the computation, he is not here for cross examination, and it is wholly immaterial and self serving.

The Court: We have a statute in relation to this objection as to a public document, records of the Government. The statute is very clear, I will have

to overrule your objection on that, Now, as to whether there is a conflict between 13 and 17.

(argument of counsel)

The Court: Examining these exhibits and also exhibit 15, I find that it informs the defendant here [16] of the rate and it gives the dates the rates were in effect. So on that objection I will have to overrule you.

Mr. Green: Exhibit 14, I have no objection.

The Court: Then it will be admitted, that takes care of them. What is next.

Mr. Casterlin: They are all admitted, that is all, the Government rests.

Mr. Greene: Comes now the defendant Hagan and Cushing Company under 50 of the revised rules and moves the Court for a directed verdict upon the ground that the plaintiff has failed to offer any evidence to establish this portion of the allegations of paragraph 2 of their complaint which reads: "Defendant delivered the supplies pursuant to the contracts and plaintiff paid to the defendant the full prices bid, which included amounts for which defendant was liable under the supposed authority of the agricultural Adjustment Act for processing taxes levied by that act on the products furnished by defendant to plaintiff." And that allegation being denied it was incumbent upon the Government to establish by evidence that the bids made by Hagan and Cushing Company which were the amounts paid by the

Government to Hagan and Cushing Company, actually included some items of amount which was or constituted processing taxes.

(remarks) [17]

The Court: The motion for directed verdict presents a question of issue of fact under the pleadings, in which the defendant asserts that the plaintiff has not proven that the supposed processing tax, which plaintiff contends they had paid to the defendant, was included in the amount paid by the Government. The complaint alleges in paragraph 2, "the defendant delivered the supplies pursuant to the contracts and plaintiff paid to the defendant the full prices bid, which included amounts for which defendant was liable under the supposed authority of the Agricultural Adjustment Act for processing taxes levied by the Act on the products furnished by the defendant to plaintiff." The defendant in its answer denies that allegation and specifically alleges that the bid price did not include the processing tax in any amount whatever. There is no evidence relating to the issue unless the statement contained in the supposed contract that: "prices bid herein include any Federal Tax heretofore imposed by the Congress which is applicable to the material on this bid." can be taken as binding on the defendant.

Defendant says the supposed contracts, which contain the provision or term referred to, are void, as they were made under the supposed provisions

of the Agricultural Adjustment Act, held by the Supreme Court to be unconstitutional,—which the Government asserts is so,—then being void as to the processing tax, can the provision or term in the [18] supposed contract relating to what the price bid includes be asserted against the defendant, and the remaining provisions of the contract be held void as contended for by the Government, as there was not in existence any processing tax at all. If there was no such tax in existence at the time the contract were made, then any provisions stated or set forth therein relating to the prices bid including such tax would be void, because we cannot strike out all of the provisions of the contract except this material one and hold that it is valid as to one of the parties to the contract. The provisions attempted to be upheld cannot be regarded as against one of the parties, that provision being one which relates to the taxes which were held not to be in existence. It is merely a statement as to a tax not in existence, and as counsel for the defendant pointed out, nowhere is the amount of the supposed tax shown, but the provision referred to was; “prices bid herein include any Federal Tax heretofore imposed by the Congress which is applicable to the material on this bid”. Under the contention here, there being no such tax, the Supreme Court having held this Act unconstitutional, then this supposed processing tax cannot be applicable.

I can only reach the conclusion that this contract which was made under this Act, which was held un-

constitutional is void,—and to say that this provision which the Government now says is sufficient proof to show that the processing [19] tax is included in the bid is binding here would be inconsistent. If we can take that provision out and say it is binding and hold the remaining portion of the contract invalid,—no, gentlemen, I cannot say that. It says that it shall include a tax which was not in existence. The Government argues this statement is an admission on the part of the defendant. You cannot make an admission of something that never existed. We are trying to say because there is a statement in the supposed contract regarding this tax which was held to have never been in existence would be an admission and binding on the defendant. Under this state of facts I will have to sustain the motion for a directed verdict.

[Endorsed]: Filed February 21, 1940. [20]

[Title of District Court and Cause.]

MINUTES OF THE COURT OF

NOVEMBER 8, 1939

* * * * *

The defendant's counsel moved the Court to direct the jury to return a verdict for the defendant. The motion was argued before the Court by respective counsel.

After due consideration, the Court announced his conclusions on the motion and granted the same. [21]

* * * * *

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America, the above named plaintiff, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment made and entered in this action on November 8, 1939, and from the whole thereof.

JOHN A. CARVER

United States Attorney for
the District of Idaho

E. H. CASTERLIN

Ass't U. S. Attorney for the
District of Idaho

PAUL S. BOYD

Assistant U. S. Attorney for
the District of Idaho.

[Endorsed]: Filed February 7, 1940. [22]

[Title of District Court and Cause.]

STIPULATION CONCERNING
EXHIBITS 13 and 17

For the purpose of the record on appeal in this matter,

It Is Hereby Stipulated and Agreed that Exhibit No. 13, admitted in evidence, is a bulletin entitled "Hog Regulations, Series 1, No. 1", issued

October 29, 1934, by the Agricultural Adjustment Administration; and, that Exhibit No. 17, admitted in evidence, is a bulletin entitled, "Misc. T. D. 4425; that the two exhibits contain the definitions and tax schedules from which the amount of taxes alleged to be included in the purchase price of the commodities is based and by means of which the said alleged taxes are computed, and the proclamations and orders putting the same into effect; and that for the purposes of the record on this appeal, this stipulation may be included and printed in lieu of the two said exhibits, which said original exhibits may be forwarded by the clerk of the trial court to the appellate court for purposes of reference and verification.

JOHN A. CARVER

United States Attorney for
the District of Idaho

E. H. CASTERLIN

Ass't U. S. Attorney for the
District of Idaho

PAUL S. BOYD

Assistant U. S. Attorney for
the District of Idaho. [62]

MAURICE H. GREENE

Attorney for Defendant.

[Endorsed]: Filed February 17, 1940. [63]

[Title of District Court and Cause.]

MOTION TO DISMISS AND MOTION FOR
MORE DEFINITE STATEMENT OR FOR
BILL OF PARTICULARS.

Filed July 6, 1939

Comes now the defendant above named and respectfully moves to dismiss the above entitled action for failure of the complaint on file herein to state a claim upon which the relief sought can be granted.

Defendant further moves the court for an order requiring plaintiff to make a more definite statement of the cause or causes of action sued upon or for a bill of particulars as follows:

A more definite statement of the terms and conditions of the contracts between the United States Government and the defendant, a portion of which said contracts is quoted in paragraph numbered (1) in said complaint.

Said motion for a more definite statement or for a bill of particulars is based upon the affidavit of Maurice H. Greene, Attorney for defendant, attached hereto and made a part hereof.

J. H. FELTON

Residing at Moscow, Idaho.

MAURICE H. GREENE

Residing at Boise, Idaho.

Attorneys for defendant. [64]

[Title of District Court and Cause.]

AFFIDAVIT OF MAURICE H. GREENE

(Attached to foregoing Motion)

State of Idaho

County of Ada—ss.

Maurice H. Greene, being first duly sworn on oath, deposes and says:

That he is one of the attorneys for the defendant Hagan and Cushing Company in the above entitled action; that he has made investigation relative to the facts concerning the causes of action sued upon in the complaint on file herein and that the statements made herein are true to the best of his belief and knowledge.

The cause of action sued upon by the United States Government is for recovery of processing taxes allegedly paid by the United States Government to the defendant as a part of the purchase price of meats and meat products sold by the defendant to the Civilian Conservation Corps; that there are twelve separate contracts constituting the cause of action set forth in plaintiff's complaint. A list of the contracts and their respective dates being set forth in paragraph numbered (3) of said complaint; that the defendant had copies of said contracts at the time of their execution but that its records were destroyed in a fire at Moscow, Idaho, on August 20, 1936; that since said date defendant has endeavored to secure copies of said contracts from the office of the Comptroller General of the

United States in Washington, D. C., and in the office of the Department of [65] War at Washington, D. C., but has been unable to secure full and complete copies of said contracts.

That as set forth in paragraph numbered (1) in plaintiff's complaint, affiant understands that each of said contracts contained the provision—

“Prices paid herein include any Federal Tax heretofore imposed by the Congress which is applicable to the material on this bid.”

Affiant is informed and believes that each of said contracts carried a provision excepting from the above quoted provision contracts relative to the sale of products to the Civilian Conservation Corps, and that the defense in this said action will be that the meat products sold to the Civilian Conservation Corps at the price stated in the contracts was without any processing tax being included therein and that in order for defendant to make said defense it is necessary that the defendant be informed whether all of the written contracts involved in said action contained a provision which permitted this defendant to sell said meat products to the Civilian Conservation Corps without including in the contract price the processing tax for meat products. That without such information as to the whole of said contracts defendant cannot prepare a defense hereto for the reason that defendant does not know without being informed of the nature and contents of each of said contracts whether they and

each of them contained the provision excepting goods sold the Civilian Conservation Corps from the operation of that portion of the contracts set forth in paragraph numbered (1) of plaintiff's complaint.

MAURICE H. GREENE

Subscribed and sworn to before me this 5th day of July, 1939.

[Seal]

S. E. BLAINE

Notary Public for Idaho, Residing at Boise, Idaho.

My Com. Exp. May 5, 1942.

[Endorsed]: Filed July 6, 1939. [66]

[Title of District Court and Cause.]

MINUTES OF THE COURT OF
SEPTEMBER 1, 1939

The defendant's motion to dismiss the complaint and motion for a bill of particulars came on for hearing, Maurice H. Greene, Esquire, appeared for the defendant and E. H. Casterlin, Assistant District Attorney, appeared for the plaintiff.

Counsel for the defendant stated that the District Attorney had lodged with the Clerk certified copies of the contracts involved and that in view of that fact the motion for a bill of particulars would be withdrawn.

The motion to dismiss was argued before the Court by respective counsel, and was by the Court taken under advisement. [67]

[Title of Court and Cause.]

ORDER DENYING MOTION TO DISMISS

In harmony with written opinion filed in the above entitled cause this date, it is hereby Ordered that the defendant's motion to dismiss is denied.

Dated September 29, 1939.

CHARLES C. CAVANAH

District Judge.

[Endorsed]: Filed September 29, 1939. [68]

[Title of District Court and Cause.]

STIPULATION CONCERNING
EXHIBITS 1 TO 12, INCLUSIVE.

For the purpose of record on appeal in this matter,

It Is Hereby Stipulated By and between the respective parties herein that exhibits numbered 1 to 12, inclusive, received in evidence on the trial of the above entitled cause are the twelve contracts entered into by plaintiff and defendant referred to in Paragraph III of plaintiff's complaint on file

herein and that each of said exhibits contain the following documents:

1. Certificate of award to Hagan and Cushing Company.
2. Contract specifications.
3. Bid of Hagan and Cushing Company accepted by the United States of America.
4. Purchase order of the United States of America.
5. Delivery order of the United States of America.
6. Voucher or claim for payment by Hagan and Cushing Company to the United States of America.
7. Cancelled check of the United States of America issued to Hagan and Cushing Company for payment in the amount of the voucher or claim for payment. [75]

That the bid of Hagan and Cushing Company on the several items in each of the twelve contracts is identical in form except for items, prices bid, and quantities, as the bid under the contract admitted in evidence as Exhibit No. 1, being the contract dated July 22, 1935, No. W-972-QM-704, referred to in Paragraph III of plaintiff's complaint, and which bid has been included in the record on appeal in full herein; that this stipulation may be included and printed in the record herein, and that said original exhibits may be forwarded by the Clerk of the trial court to the appellate court for

the purpose of reference and verification of the matters and things set forth herein.

MAURICE H. GREENE

J. H. FELTON

Attorneys for Defendant
Hagan and Cushing Company.

JOHN A. CARVER

United States District Attorney
for the District of Idaho.

E. H. CASTERLIN

PAUL S. BOYD

Assistant United States Attorneys
for the District of Idaho.

[Endorsed]: Filed Feb. 24, 1940. [76]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF UNITED
STATES DISTRICT COURT TO TRAN-
SCRIPT OF RECORD.

United States of America,
District of Idaho—ss.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing and type-written pages numbered 1 to 76, inclusive, to be true and correct copies of the originals on file in the Clerk's office of the papers and proceedings in

the above entitled cause as are necessary to the hearing of the appeal thereon in the United States Circuit Court of Appeals for the Ninth Circuit, and the same constitutes the record on appeal as designated by the appellant and appellee.

I Further Certify That the fees of the Clerk of this Court for preparing and certifying the foregoing typewritten record amount to the sum of \$21.50, and of that sum the appellant has paid the sum of \$16.10, and the appellee the sum of \$5.40.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 27th day of February, 1940.

[Seal]

W. D. McREYNOLDS

Clerk.

[Endorsed]: No. 9459. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Hagan and Cushing Company, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Idaho, Central Division.

Filed February 29, 1940.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

#9459

UNITED STATES OF AMERICA,

Appellant,

vs.

HAGAN AND CUSHING COMPANY,

Appellee.

STATEMENT OF POINTS UNDER RULE 19,
AND DESIGNATION OF RECORD.

Comes Now the above named appellant and files its statement of points on which it will rely on the appeal in this matter and its designation of record.

STATEMENT OF POINTS

I.

The court erred in granting defendant's motion for a directed verdict.

II.

The judgment entered herein is contrary to law.

III.

The judgment is not sustained by and is contrary to the evidence in the following respects.

(a) The evidence conclusively shows that the full prices bid by the defendant in each instance included the amount of processing taxes levied under the supposed authority of the Agricultural Adjustment Act of May 12, 1933, as amended.

(b) The evidence conclusively shows that the full prices bid by the defendant were paid by the plaintiff to the defendant.

(c) The evidence conclusively shows that the defendant has not paid the plaintiff the amount of said taxes.

(d) The evidence conclusively shows that the plaintiff is entitled to recover from the defendant the said amount of money for processing taxes, with interest and costs, in conformity with the prayer of plaintiff's complaint.

DESIGNATION OF RECORD

That part of the record necessary for the consideration of the foregoing points are as hereinafter designated, pages referring to clerk's transcript:

	Pages
1. Complaint	3-4
2. Answer	5-6
3. Judgment	8-9
4. Reporter's transcript	11-20
5. Minutes of November 8, 1939	21
6. Exhibit No. 1	27-28-a ; 69-72
7. Exhibit No. 2	29-31
8. Exhibit No. 3	32-34
9. Exhibit No. 4	35-37
10. Exhibit No. 5	38-40
11. Exhibit No. 6	41-43
12. Exhibit No. 7	44-45

13. Exhibit No. 8	46-47
14. Exhibit No. 9	48-49
15. Exhibit No. 10	50-51
16. Exhibit No. 11	52-53
17. Exhibit No. 12	54-55
18. Exhibit No. 15	57-60
19. Exhibit No. 16	61
20. Stipulation re hog regulation	62-63
21. Motion to dismiss	64
22. Minutes of September 1, 1939	67
23. Order denying motion to dismiss	68
24. Stipulation re exhibits	75-76
25. Designation of points relied upon under Rule 19	—

JOHN A. CARVER

United States Attorney for
the District of Idaho

E. H. CASTERLIN

Ass't U. S. Attorney for the
District of Idaho

PAUL S. BOYD

Ass't U. S. Attorney for the
District of Idaho.

Attorneys for Appellants.

Service of the foregoing by receipt of copy thereof this 28th day of February, 1940, is hereby acknowledged.

MAURICE H. GREENE

Attorney for Appellee.

[Endorsed]: Filed March 1, 1940. Paul P. O'Brien, Clerk.

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